

REFERENCE TITLE: environment; citizen suits

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

HB 2274

Introduced by
Representatives Sinema, Gallardo: Campbell CH, Lopez, Lujan, Pancrazi

AN ACT

AMENDING SECTIONS 49-264 AND 49-407, ARIZONA REVISED STATUTES; RELATING TO
THE ENVIRONMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 49-264, Arizona Revised Statutes, is amended to
3 read:

4 49-264. Private right of action; citizen suits; civil penalty

5 A. Except as provided in subsection B **OF THIS SECTION**, a person having
6 an interest ~~which~~ **THAT** is or may be adversely affected ~~by a violation of this~~
7 ~~chapter or a rule adopted or an order issued by the department pursuant to~~
8 ~~this chapter~~ may commence a civil action in superior court on ~~his~~ **THE**
9 **PERSON'S** own behalf against:

10 1. **A PERSON, THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE**
11 **ALLEGING A VIOLATION OF THIS CHAPTER OR AN ORDER, PERMIT, STANDARD, RULE OR**
12 **DISCHARGE LIMITATION ADOPTED OR ISSUED PURSUANT TO THIS CHAPTER. THE COURT**
13 **HAS JURISDICTION TO ENFORCE THIS CHAPTER OR AN ORDER, PERMIT, STANDARD, RULE**
14 **OR DISCHARGE LIMITATION AND TO APPLY ANY APPROPRIATE CIVIL PENALTY PURSUANT**
15 **TO SECTION 49-262.**

16 2. The director alleging a failure of the director to perform an act
17 or duty under this chapter ~~which~~ **THAT** is not discretionary with the director.
18 The court shall have jurisdiction to order the director to perform the act or
19 duty.

20 B. ~~No~~ **AN** action may **NOT** be commenced in ~~any~~ **EITHER** of the following
21 cases:

22 1. Before ~~one hundred twenty~~ **SIXTY** days after the plaintiff has given
23 notice of the alleged violation to the director and to an alleged violator.

24 ~~2. If after conducting an investigation the director determines within~~
25 ~~one hundred twenty days after receiving notice of the alleged violation from~~
26 ~~the plaintiff that no violation has occurred, or the director had determined~~
27 ~~prior to receiving the notice of the alleged violation that the violation had~~
28 ~~not occurred.~~

29 ~~3. If the department has issued and is diligently processing a notice~~
30 ~~of violation or an order or has commenced and is diligently prosecuting a~~
31 ~~civil action in the superior court to require compliance with the provision,~~
32 ~~order, permit, standard, rule or discharge limitation.~~

33 ~~4.~~ 2. If the attorney general or county attorney has commenced and is
34 diligently prosecuting a civil action in the superior court to require
35 compliance with ~~the provision,~~ **THIS CHAPTER OR AN** order, permit, standard,
36 rule or discharge limitation.

37 ~~5. The director is diligently pursuing the violation under another~~
38 ~~state or federal environmental law.~~

39 C. In an action commenced under this section:

40 1. **THE DIRECTOR, IF NOT A PARTY, MAY INTERVENE AS A MATTER OF RIGHT.**

41 2. The plaintiff has the burden of proof.

42 D. The court, in issuing a final order in an action brought under this
43 section, may:

1 1. Award costs of litigation, including reasonable attorney and expert
2 witness fees, to any party ~~that substantially prevails~~ IF THE COURT
3 DETERMINES IT IS APPROPRIATE AND, IN ADDITION, TO THE DEFENDANT IN THE CASE
4 OF A FRIVOLOUS ACTION.

5 2. PROVIDE FOR INJUNCTIVE OR OTHER EQUITABLE RELIEF OR ASSESS CIVIL
6 PENALTIES THAT COULD HAVE BEEN ASSESSED UNDER SECTION 49-262. ANY MONIES
7 COLLECTED AS CIVIL PENALTIES SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146
8 AND 35-147, IN THE WATER QUALITY ASSURANCE REVOLVING FUND ESTABLISHED BY
9 SECTION 49-282.

10 E. THIS SECTION SHALL BE CONSTRUED IN A MANNER CONSISTENT WITH 33
11 UNITED STATES CODE SECTION 1365 AND WITH JUDICIAL INTERPRETATIONS OF THAT
12 SECTION.

13 Sec. 2. Section 49-407, Arizona Revised Statutes, is amended to read:
14 49-407. Private right of action; citizen suits; civil penalty

15 A. Except as provided in subsection B OF THIS SECTION, a person having
16 an interest ~~which~~ THAT is or may be adversely affected may commence a civil
17 action in superior court on ~~his~~ THE PERSON'S own behalf against:

18 1. A PERSON, THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE
19 ALLEGING A VIOLATION OF THIS ARTICLE OR ARTICLE 2 OF THIS CHAPTER OR AN
20 ORDER, PERMIT, STANDARD, RULE OR EMISSION LIMITATION ADOPTED OR ISSUED
21 PURSUANT TO THIS ARTICLE OR ARTICLE 2 OF THIS CHAPTER. THE COURT HAS
22 JURISDICTION TO ENFORCE THIS ARTICLE OR ARTICLE 2 OF THIS CHAPTER OR AN
23 ORDER, PERMIT, STANDARD, RULE OR EMISSION LIMITATION AND TO APPLY ANY
24 APPROPRIATE CIVIL PENALTY PURSUANT TO SECTION 49-463.

25 2. The director alleging a failure of the director to perform an act
26 or duty under this article or article 2 of this chapter that is not
27 discretionary with the director. The court has jurisdiction to order the
28 director to perform the act or duty.

29 B. ~~No~~ AN action may NOT be commenced in ~~any~~ EITHER of the following
30 cases:

31 1. Before sixty days after the plaintiff has given notice of the
32 alleged violation to the director and to an alleged violator.

33 ~~2. If the director determines no violation has occurred, or if the~~
34 ~~director has initiated an administrative enforcement action by issuing a~~
35 ~~warning letter, notice of violation or issuing an order.~~

36 ~~3.~~ 2. If the attorney general or county attorney has commenced and is
37 diligently prosecuting a civil action in the superior court to require
38 compliance with ~~the provision,~~ THIS ARTICLE OR ARTICLE 2 OF THIS CHAPTER OR
39 AN order, permit, standard, rule or emission limitation.

40 C. In an action commenced under this section:

41 1. THE DIRECTOR, IF NOT A PARTY, MAY INTERVENE AS A MATTER OF RIGHT.

42 2. The plaintiff has the burden of proof.

43 D. The court, in issuing a final order in an action brought under this
44 section, may:

1 1. Award costs of litigation, including reasonable attorney and expert
2 witness fees, to any party ~~that substantially prevails~~ IF THE COURT
3 DETERMINES IT IS APPROPRIATE AND, IN ADDITION, TO THE DEFENDANT IN THE CASE
4 OF A FRIVOLOUS ACTION.

5 2. PROVIDE FOR INJUNCTIVE OR OTHER EQUITABLE RELIEF OR ASSESS CIVIL
6 PENALTIES THAT COULD HAVE BEEN ASSESSED UNDER SECTIONS 49-462 AND
7 49-463. ANY MONIES COLLECTED AS CIVIL PENALTIES SHALL BE DEPOSITED, PURSUANT
8 TO SECTIONS 35-146 AND 35-147, IN THE AIR QUALITY FUND ESTABLISHED BY SECTION
9 49-551.

10 E. THIS SECTION SHALL BE CONSTRUED IN A MANNER CONSISTENT WITH 33
11 UNITED STATES CODE SECTION 1365 AND WITH JUDICIAL INTERPRETATIONS OF THAT
12 SECTION.